



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 31, 1996

Ms. Doreen E. McGookey  
Assistant City Attorney  
Criminal Law and Police Division  
Office of the City Attorney  
City of Dallas  
501 Police & Courts Bldg.  
Dallas, Texas 75201

OR96-0118

Dear Ms. McGookey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37897.

The City of Dallas Police Department (the "city") received a request for certain information concerning Officer Stephen B. Christian. Specifically, the requestor seeks

1. a copy of the internal affairs investigation file of Officer Stephen B. Christian;
2. a copy of Officer Stephen B. Christian's personnel file;
3. a copy of any and all documents relating to Officer Stephen B. Christian's mental condition at any time; and
4. copies of all documents presented to the Grand Jury regarding the shooting of Officer Stephen B. Christian and Officer Sparks.

You contend that portions of the requested information are excepted from required public disclosure under sections 552.101 and 552.108 of the Government Code. You do not indicate, however, whether any information exists that is responsive to item 4 or under what exception you seek to withhold this information. Accordingly, we do not address item 4 in this ruling.<sup>1</sup>

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<sup>1</sup>Chapter 552 of the Government Code applies only to information that is in existence at the time a request for information is received; it does not require a governmental body to prepare new information. Open Records Decision Nos. 605 (1992), 572 (1990). However, we note that records of the judiciary are

We understand that Dallas is a civil service city under the Texas Local Government Code. Accordingly, the items in request number 2, the officers' personnel file, and some of the items that are responsive to request number 1 and 3 may be excepted from disclosure under section 143.089 of the Local Government Code. Section 143.089 of the Local Government Code works in conjunction with section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 143.089 of the Local Government Code contemplates two different types of personnel files, one that the police department is required to maintain as part of a police officer's civil service file, and one that the police department may maintain for its own internal use. Local Gov't Code § 143.089(a), (g).

Section 143.089(g) provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

In *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the city police department for its use and addressed the applicability of section 143.089(g) to that file. The records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *City of San Antonio*, 851 S.W.2d at 949. In cases in which a police department takes disciplinary action against a police officer, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the personnel files maintained under section 143.089(a). Such records may not be withheld under section 552.101 of the act. Local Gov't Code § 143.089(f); Open Records Decision No. 562 (1990) at 6.

We are unable to determine whether the documents you submitted to us for review are part of the files maintained by the police department under section 143.089(g). If they

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(Footnote continued)

not subject to chapter 552. Gov't Code § 552.003(1)(B). *But see* Open Records Decision No. 513 (1988) (although information obtained pursuant to grand jury subpoena is within grand jury's constructive possession, mere submission of information to grand jury by district attorney does not necessarily mean that it is within grand jury's constructive possession).

are, the city must withhold the information requested in request numbers 2 and 3.<sup>2</sup> Similarly, if any internal affairs investigation sought in request number 1 did not result in disciplinary action being taken, and these documents are part of the section 143.089(g) files, the city must withhold these investigations. However, if any internal affairs investigation did result in disciplinary action, then "any record, memorandum, or document relating to" the disciplinary action must be placed in the personnel files maintained by the civil service commission under section 143.089(a).

We now address your other claims in the event that the documents submitted to this office for review are not part of a police officer's section 143.089(g) files. You claim that all of the documents submitted as exhibits 1, 2, 3, and 4 are confidential under Health and Safety Code section 611.002 and that exhibit 5 is confidential under V.T.C.S. article 4495b, section 5.08. We disagree.

Section 611.002 makes confidential only those communications or records concerning a patient created or maintained by a professional as defined in section 611.001(2). Exhibits 1 and 2 contain documents created by Sergeant Christian, and Sergeant DeCorte, not a professional as defined in section 611.001(2). Moreover, these documents do not reveal the communications between a patient and a professional.<sup>3</sup> Accordingly, this information may not be withheld under section 552.101 of the Government Code as information made confidential by law.<sup>4</sup> For your convenience, we have marked the information in exhibit 3 that is made confidential by section 611.002. The remaining information in exhibit 3 must be released. The release of the information marked in exhibit 3 as confidential under section 611.002 is governed by the Health and Safety Code, not chapter 552 of the Government Code. Health & Safety Code § 611.004. *See generally* Open Records Decision No. 598 (1991) (access to records created or maintained by physician within V.T.C.S. art. 4495b, § 5.08 is governed by that statute, and where it *grants* access, Open Records Act exceptions may not be invoked to *deny* access). Exhibit 4 is illegible. However, to the extent that it contains information created or maintained by a professional concerning a patient, the release of the information is governed by the Health and Safety Code. We remind the city that if exhibit 4 contains the type of information contained in exhibits 1 and 2, we have already determined that section 611.002 does not apply to the information.

Section 5.08, V.T.C.S. article 4495b, like the provisions discussed above, only makes confidential communications concerning the professional services that occur during the patient-physician relationship and the records created or maintained by a physician

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<sup>2</sup>We also note that section 143.089(g) requires a police department who receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee.

<sup>3</sup>The records clearly indicate that Officer Christian was not at any time a patient of the "professionals" referenced in exhibits 1 and 2.

<sup>4</sup>We note that Officer Christian is deceased. Accordingly, there is no privacy interest in this information. Attorney General Opinion JM-229 (1984) (right of privacy lapses upon death).

concerning a patient. V.T.C.S. art. 4495b, § 5.08(a), (b). Only the right side of exhibit 5, which we have marked, contains such information. The release of this information is governed by the Medical Practice Act, V.T.C.S. art. 4495b, § 5.08(j)(1),<sup>5</sup> not chapter 552 of the Government Code. Open Records Decision No. 598 (1991).

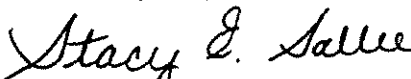
Finally, you claim that exhibit 6, documents from a pending internal affairs investigation, are excepted from required public disclosure under section 552.108(b) of the Government Code.

Section 552.108(b) excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." This section excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 531 (1989) at 2 (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). When section 552.108(b) is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 434 (1986) at 3.

We are not aware that the requested information relates to a pending or on-going criminal investigation. You state that release of the investigation prior to any internal review "would be very disruptive to disciplinary procedure" of the department. You do not, however, explain how release of the requested information would unduly interfere with law enforcement and crime prevention. Accordingly, you may not withhold this information under section 552.108(b) of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

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<sup>5</sup>See also V.T.C.S. art. 4495b, § 1.03(a)(17) (definition of legally authorized representative); Open Records Decision No. 546 (1990) (consent to release of medical information under V.T.C.S. art. 4495b, § 5.08(j) is insufficient unless it specifies reasons for release of information, but if records are identifiable, they have been described with specificity that is sufficient for purposes of § 5.08(j)).

Ref: ID# 37897

Enclosures: Marked documents

cc: Mr. John Holman Barr  
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(w/o enclosures)